

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT—CHANCERY DIVISION**

JOHN J. ESCALANTE, )  
INTERIM SUPERINTENDENT OF CITY OF )  
CHICAGO POLICE DEPARTMENT, )

Plaintiff, )

vs. )

ROBERT DRELL and THE POLICE )  
BOARD OF THE CITY OF CHICAGO, )

Defendants. )

Case No. 15 CH 6592

Calendar 7

Judge Diane Larsen

**MEMORANDUM OPINION AND ORDER**

This cause is before the court on a Complaint for Administrative Review (“Complaint”) by Plaintiff John J. Escalante, Interim Superintendent of City of Chicago Police Department (“Superintendent”)<sup>1</sup> against Defendants Robert Drell (“Officer Drell”) and the Police Board of the City of Chicago (“Police Board”) over which the court has both subject matter and personal jurisdiction. The court has reviewed the Complaint, the Answer of Police Board of the City of Chicago (in the form of the Record of Proceedings in Police Board Case 14 PB 2877), the Brief in Support of Complaint for Administrative Review (“Plaintiff’s Brief”), Defendant Drell’s Brief in Opposition to Plaintiff’s Petition for Administrative Review (“Officer Drell’s Response”), the Reply in Support of Complaint for Administrative Review (“Plaintiff’s Reply”), and all exhibits attached thereto. For the following reasons, the court reverses the Police Board’s decision and remands the cause for further proceeding consistent with this opinion and order.

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<sup>1</sup> This case was originally filed by then Superintendent Garry McCarthy. However, Mr. McCarthy was terminated from his position as Superintendent on December 1, 2015. Accordingly, the court has *sua sponte* substituted Interim Superintendent John J. Escalante, as the proper party Plaintiff, in his official capacity. The captioned is hereby ordered amended and the complaint is ordered amended on its face.

## BACKGROUND

The Chicago Police Department (the “Department”) placed Officer Drell on medical roll between February 3 and March 31, 2013, and then again between May 5 and September 10, 2013. R. at PB 177–186.<sup>2</sup> While Officer Drell was on medical roll, he conducted business for the painting business he owned and operated, Abbott Painting, Inc. (“Abbott”). R. at PB 53:18:20–24; PB 57:37:1–24; PB 58:38:6–24, 39:9–24, 40:9–24, 41:5–24; PB 60:46:16–24, 47:1–7; PB 61:50:8–21, 51:1–4, 52:9–18; PB 123–159.

On October 30, 2014, the Superintendent filed charges with the Police Board against Officer Drell alleging violations of the following Rules and Regulations of the Chicago Police Department. R. at PB 1–6. Specifically, Officer Drell was alleged to have violated Rule 2 (“any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department . . .”), Rule 6 (“[d]isobedience of an order or directive, whether written or oral . . .”), Rule 23 (“[f]ailure to obey Department orders concerning other employment, occupation, or profession . . .”), and Rule 24 (“[f]ailure to follow medical roll procedure . . .”). R. at PB 3–5.

A hearing was conducted on these charges before Thomas E. Johnson, Hearing Officer of the Police Board, on January 29, 2015. R. at PB 7. Following the hearing, the members of the Police Board read and reviewed the record of proceedings, and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision. *Id.* In a five-to-three vote, the Police Board found Officer Drell not guilty of the charges. R. at PB 7–15. The dissenting Police

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<sup>2</sup> The record of proceedings in the Police Board case (14 PB 2877) is bates stamped with the abbreviation PB followed by a number and is cited in this opinion as “R. at PB [page number]: [line number].” Because the transcript contained in the record is (at least in part) in a condensed version of four pages on a single sheet, the court cites it as “R. at PB [page number]:[transcript page number]:[line number].”

Board members issued a dissent. R. at PB 16-17. The Police Board issued no disciplinary action and ordered that Officer Drell be “restored to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective November 14, 2014.” R. at PB 14. The Superintendent appealed the Police Board decision by filing this action.

### STANDARD OF REVIEW

Decisions of the Police Board are subject to judicial review pursuant to the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014); *Daniels v. Police Board*, 338 Ill. App. 3d 851, 858 (1st Dist. 2003). The standard of review depends upon the nature of the question the court is asked to address. *Swanson v. Board of Trustees of the Flossmoor Police Pension Fund*, 2014 IL App (1st) 130561, ¶ 27. Courts review questions of fact under a manifest weight of the evidence standard; “[t]he decision of an administrative agency . . . is against the manifest weight of the evidence if an opposite conclusion is clearly evident.” *Id.* at ¶ 30. If the record contains evidence supporting the agency’s decision, the circuit court must affirm the agency decision. *1212 Restaurant Group, LLC v. Alexander*, 2011 IL App (1st) 1000797, ¶ 42. In contrast, questions of law are subject to *de novo* review, a standard characterized as “independent and not deferential.” *Cinkus v. Stikney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210–11 (2008). Finally, courts apply a clearly erroneous standard to mixed questions of fact and law; “an administrative agency’s decision is deemed ‘clearly erroneous’ when the reviewing court is left with the ‘definite and firm conviction that a mistake has been committed.’” *Id.* at 210–11 (quoting *AFM Messenger Service Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391–95 (2001)). The instant case is a mixed question of fact and law review invoking the manifest weight of the evidence standard.

The record of an administrative appeal is the only evidence a reviewing court considers, other than federal and state statutes, regulations, and the relevant policies of the agency. 735 ILCS 5/3-110 (West 2014); *Berkley v. Illinois Department of Children & Family Services*, 214 Ill. 2d 31, 56 (Ill. 2005) (“judicial review of an administrative agency decision is limited. Courts may not consider evidence outside of the record of the administrative appeal, reweigh the evidence to determine where the preponderance lies, or evaluate the credibility of the witnesses.”). A reviewing court may not substitute its reasoning for that of the agency. 735 ILCS 5/3-110 (West 2014); *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004). A reviewing court may consider disciplinary actions toward other employees to determine whether the findings are arbitrary and unreasonable for “completely related” cases or cases where there are “two respondents in identical circumstances.” *Launius v. Board of Fire & Police Commissioners of Des Plaines*, 151 Ill. 2d 419, 442–43 (1992). In Illinois, the mere “fact that different individuals have been disciplined differently is not a basis for concluding that an agency’s disciplinary decision is unreasonable.” *Siwek v. Police Board*, 374 Ill. App. 3d 735, 738 (1st Dist. 2007). However, “[s]udden unexplained changes’ in an agency’s policy or practice ‘have often been considered arbitrary.’” *Illinois Council of Police v. Illinois Labor Relations Board*, 404 Ill.App.3d 589, 596–97 (1st Dist. 2010) (quoting *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 506 (1988)).

## DISCUSSION

The Superintendent charged Officer Drell with violating the conditions of medical roll and limited duty by running Abbott. R. at PB 3–6. The work Officer Drell conducted while on medical leave included working at the offices of Abbott; purchasing and delivering paint supplies to its job sites; meeting with current and prospective customers; and observing,

directing, and paying painters. R. at PB 53, PB 57-58. The Department expects its police officers to read and comprehend the rules and regulations that that govern police conduct. R. at PB 52:17:11-17.

Officer Drell testified that, as a sworn officer, he was required to know Department Rules. R. at PB 52:17:11-17. Officer Drell knew he was engaging in secondary employment and, therefore, must have known he was violating Department rules. R. at PB 53:19:19-24; PB 160-163 (CPD R. E01-11 IV(J) prohibits “secondary employment” on the medical roll “for any reason”). Rule E01-11 defines secondary employment as “any . . . activity for which any Department member is being compensated . . . for services performed for an employer or in a self-employed status.” R. at PB 160 (CPD E-01-11 § II). Officer Drell’s activities for Abbott constitute extra-departmental activity because they are unrelated to his duties as a police officer. R. at PB 53:19-24.

Abbott is classified as an S Corporation, so Officer Drell is compensated for his efforts in the form of yearly payouts from Abbott’s profits. 26 U.S.C. § 1361 (2007); R. at PB 160-163 (CPD R. E01-11 § II); PB 61:52:20-24, 53:1-13. Officer Drell engaged in services for Abbott while on medical leave by conducting administrative duties, driving to job sites, meeting with employees and clients, and ordering and delivering paint supplies. R. at PB 53:18:20-24; PB 57:37:1-24; PB 58:38:6-24, 39:9-24, 40:9-24, 41:5-24; PB 60:46:16-24, 47:1-7; PB 61:50:8-21, 51:1-4, 52:9-18; PB 123-159. As Commander Robert Klimas of the Bureau of Internal Affairs testified, secondary employment is categorically prohibited when an officer is on the medical roll. R. at PB 75:23-24; PB 76:1-7; PB 160-163 (CPD R. E01-11 § IV(J).) Accordingly, by engaging in services for Abbott while he was on medical leave, Officer Drell violated E01-11.

The finding that Officer Drell was not guilty of violating the rule is clearly erroneous and against the manifest weight of the evidence. This is particularly true considering the unequivocal language in E01-11, which defines secondary employment as “any extra-Department activity for which any Department member is being compensated in salary, wages, commission, or other things of value for services performed for an employer or in a self-employed status” and further states “Secondary employment is prohibited \* \* \* When a Department member is on the Medical Roll for any reason.” (CPD R. E01-11 § IV(J).) As this language is clear and unambiguous, the Police Board’s findings that “it is incumbent upon the Department to more clearly communicate to its employees that any kind of employment, including the operation of a pre-existing business, without any physical labor, is forbidden,” and that “the present policy and restrictions are not sufficiently clear with respect to the conduct in which Officer Drell engaged, and thus he cannot be found guilty of violating the rule” are both erroneous and incongruous. R. at PB 160-163; 11.

The court’s conclusion is further supported by considering similar cases which resulted in six month suspensions where the Police Board found other officers guilty of violating Rules 2, 6, 23, and 24 in the same way as Officer Drell. See *Launius*, 151 Ill. 2d at 442–43 (a reviewing court may consider disciplinary actions toward other employees to determine whether the findings are arbitrary and unreasonable). For instance, where Officer John Smith engaged in secondary employment as a school security guard while on the medical roll, the Police Board concluded that although Officer Smith engaged in work during the time he was on medical roll, because “he did not aggravate his injury or interfere with his recovery,” did not malingering or hide his secondary employment, he did not warrant a full suspension but rather a “more fitting punishment on the facts of this particular case.” *John Smith*, 13 PB 2828 at 3–4 (June 2013). As such, the Police Board suspended Officer Smith for six months. *Id.* Similarly, Officer Roger

Washington worked as a security officer at a local community college while he was on medical roll. *Roger Washington*, 13 PB 2831 at 4–5 (August 2013). Just as in the *Smith* case, the Police Board found Washington did not aggravate his injury, had no prior disciplinary record, and was not malingering. *Id.* The Police Board also suspended Washington for six months. *Id.*

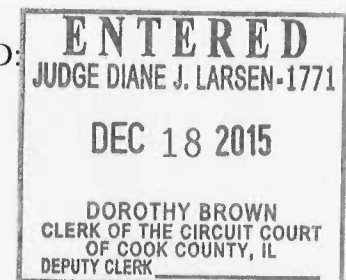
In light of the decisions of the Police Board in the two aforementioned cases and because “[s]udden unexplained changes’ in an agency’s policy or practice ‘have often been considered arbitrary’” (*Illinois Council of Police*, 404 Ill.App.3d at 596–97 (quoting *Greer*, 122 Ill. 2d at 506)), the court holds that it is appropriate to reverse the Police Board’s decision finding Officer Drell not guilty since it is clear that Officer Drell violated the rules and regulations of the Department with which he was charged. It is further appropriate to remand this matter to the Police Board with instructions to enter a finding of guilty and proceed to determine the fitting punishment in like manner to similar cases.

### ORDER

WHEREFORE, based on the totality of evidence before it, the court:

- (1) Reverses the Board’s decision finding Officer Drell not guilty of violating Rules 2, 6, 23, and 24;
- (2) Remands this matter to the Police Board with instructions to enter a finding of guilty and proceed to determine an appropriate sanction; and
- (3) Status is set for January 15, 2016 at 9:30 a.m.

IT IS SO ORDERED:



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Judge Diane Joan Larsen